

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.13097 OF 1997

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DATED: 03-04-2007

Between:

Ch. Jeevan Babu

.. Petitioner

and

The Director General, C.R.P.F., CGO
Complex, Lodi Road, New Delhi and
others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.13097 OF 1997

ORDER:

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This writ petition is filed seeking a mandamus declaring the action of the respondents in removing the petitioner from service vide proceedings of the 3rd respondent, dated 12.09.1995, in P.VII.2/95-92-EC-II, which were confirmed by the 2nd respondent vide proceedings, dated .05.1997, in R.XIII-1/97-EC-VI, as illegal and arbitrary; and consequently to direct the respondents to reinstate the petitioner into service.

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It is the case of the petitioner that he was appointed as a Constable in Central Reserve Police Force (for short 'C.R.P.F.') in the month of November 1989. Ever since, he had been discharging the duties with all devotion and dedication. In the year 1991, he was posted to work with 3rd respondent Battalion. While working in the said Battalion, he was admitted into hospital at Udayapur, Tripura for acute malarial infection. Thereafter, he was shifted to psychiatric hospital at Agarthala of Tripura State. Since the doctors advised the petitioner to take complete rest, he went on medical leave. After expiry of leave, he joined duty in March 1995. While that being so, the petitioner was accused of unauthorized absence from 09.05.1995 to 11.05.1995. Ignoring fervent requests made by the petitioner, draconic punishment of removal from service was imposed on him. The period of suspension was not treated as on duty. The petitioner was ill

treated by the authorities and he was kept under lock and key. He was arrested on the alleged ground of unauthorized absence and was not allowed to communicate the fact to his father, who is an Ex-serviceman. An enquiry was conducted without giving an opportunity to the petitioner and everything was done in an atmosphere of terror, and, in fact, the petitioner was forced to sign on a false statement, during the course of enquiry, at gun point. Questioning the orders of removal, the petitioner filed a writ petition before this Court and the said writ petition was disposed of on 25.09.1996 directing the authorities to consider the representation made by the petitioner. But, there was no response from the respondents except a communication, dated 22.12.1996, stating that the appeal preferred by him has been forwarded to I.G.P. Central Sector, C.R.P.F., Lucknow, for taking necessary action. Since there was no further response from the respondents, the petitioner once again approached this Court by filing W.P.No.8409 of 1997 seeking reinstatement and also seeking disposal of the appeal filed by him. When the said writ petition was pending, the petitioner received a communication from the respondents intimating that his claim for reinstatement was rejected. According to the petitioner, vide communication dated 22.12.1996, he was informed that the appeal filed by him was forwarded to I.G.P. Central Sector, C.R.P.F., Lucknow, but the present impugned orders are issued by the D.I.G., C.R.P.F., Allahabad. Thus, it could be seen that the impugned orders of rejection of appeal, preferred by the petitioner, were issued by an authority, which has no authority to pass such orders. Apart from that, the punishment of removal from service imposed on the petitioner, on the alleged ground of unauthorized absence for a period of three days, is highly disproportionate. In fact, during the said period of unauthorized absence, the petitioner was within the campus and vicinity of Battalion. Aggrieved by the said punishment, the petitioner

filed this writ petition.

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A detailed counter-affidavit has been filed by the respondents denying the allegations made by the petitioner. It is asserted in the counter-affidavit that the petitioner absented himself from camp on 09.05.1995, at about 2000 hours, without permission of competent authority, leaving behind the rifle and ammunition unattended on his cot. Later, he was found in 28th Battalion, BSF Camp on 11.05.1995 and was brought to A/92 location by a party at about 0900 hours on the same day. He was placed under suspension on 13.05.1995 and departmental enquiry was conducted against him. In the said enquiry, the petitioner was found guilty for absenting from the camp from 09.05.1995 (0200 hrs) to 11.05.1995 (0900 hrs) without permission of competent authority, while on guard duty in the insurgency prone area of Tripura. Keeping in view of the gravity of offence, the petitioner was removed from service with effect from 12.09.1995 vide office order No.P.VII.2/95-92-EC-II dated 12.09.1995. Since he was not exonerated of the charges levelled against him in the departmental enquiry and was found guilty in the enquiry, the suspension period from 09.05.1995 to date of removal from service was not treated as on duty, as per rules. The punishment imposed on the petitioner is in conformity with the rules. Though the offence committed by the petitioner was so grave for which the punishment of dismissal from service ought to have been imposed, yet a lenient view was taken by the disciplinary authority and he was removed from service, keeping in view of the opportunities for future employment. No injustice was done to the petitioner. The D.I.G.P., C.R.P.F., Allahabad, being appellate authority, is very much competent to pass orders on the appeal filed by the petitioner. The writ petition is devoid of merits and is liable to be dismissed.

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_____ Heard both sides.

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_____ I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the impugned orders and other material available on record.

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_____ The charge levelled against the petitioner is that he was absented from duty/camp from 09.05.1995 (afternoon) to 11.05.1995 (forenoon) and thereby committed an offence of disobedience of orders/neglect of duty/remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the force.

_____ According to the learned counsel for the petitioner, the petitioner was mentally upset and, in fact, earlier also he suffered with malarial infection and he was undergone psychiatric treatment in the month of March 1995. Therefore, the authorities could have taken a lenient view against the petitioner and, instead of removing the petitioner from service, some other lesser punishment ought to have been imposed.

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_____ It is the case of the respondents that the petitioner, who was posted at the insurgency prone area of Tripura, should not have left the place without proper permission from the competent authority. Therefore, even if the petitioner was found to be absented from duty for 37 hours, he is liable to be removed from service, since the dereliction of duty of this nature cannot be condoned.

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_____ A perusal of the impugned order, which was confirmed by the appellate authority, does not indicate that the petitioner was in the habit of absenting from duties frequently or he has committed any other misconduct of this nature earlier. The petitioner, who worked for six years in the Force, being affected by malarial infection, lost his mental balance and even, during the alleged 37 hours period of unauthorized absence from duties, he was found in a different camp of Boarder

Security Force. This itself shows the mental imbalance of the petitioner, due to which he was not able to attend to his duties properly. Instead of taking a lenient view on the 37 hours absenteeism of the petitioner, particularly, in the absence of any past conduct of such nature, the punishment of removal from service was imposed on him, which, in my considered opinion, is highly disproportionate to that of the alleged absenteeism of the petitioner. Therefore, the impugned order issued by the disciplinary authority, as confirmed by the appellate authority, is liable to be set aside and accordingly set aside.

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In a case of this nature, generally, the matter requires to be remanded for reconsideration by the disciplinary authority. But, as it is more than 12 years since the petitioner is out of employment, it is desirable to give a quietus to this litigation at this stage.

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Under these circumstances, the impugned orders of the 3rd respondent and the 2nd respondent are set aside and the respondents are directed to reinstate the petitioner into service with continuity of service and other attendant benefits from the date of removal till the date of reinstatement, but without backwages, subject to medical fitness etc, within a period of one month from the date of receipt of a copy of this order.

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With the above directions, the writ petition is disposed of. There shall be no order as to costs.

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C.V. RAMULU, J

3rd April, 2007.

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